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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,537	07/25/2003	Jeffrey Kent Fredenburgh	JJ-10 072-1-1US	1156

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EXAMINER

WARE, DEBORAH K

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,537	<b>Applicant(s)</b> FREDENBURGH ET AL.	
	<b>Examiner</b> Deborah K. Ware	<b>Art Unit</b> 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                               |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                                              | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/19/04</u> . | 6) <input type="checkbox"/> Other: _____                                                |

### **DETAILED ACTION**

Claims 1-25 are presented for reconsideration on the merits.

#### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on November 19, 2004, was received. The submission is in compliance with the provisions of 37 CFR 1.97 and/or the fee has been paid. Accordingly, the information disclosure statement is being considered by the examiner.

#### **APPLICANT'S AMENDMENT AND REMARKS**

The amendment and remarks filed November 1, 2004, have been received and entered.

#### ***Specification***

The priority issue has been resolved with Applicants' amendment of November 1, 2004, regarding the parent cases, however, Applicants are requested to update the current status of the parent case which is now abandoned as indicated in the previous office action of June 30, 2004, note page 2, lines 11-12.

#### ***Response to Amendment and Arguments***

Applicant's arguments filed November 1, 2004, have been fully considered but they are not persuasive. Although the amendments and arguments overcome the previous rejections under 35 USC 112, first and second paragraphs and the previous art rejection under 35 USC 103, the amendments have presented new issues for consideration as follows:

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said surface" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is unclear in each of the claims 1-25 whether the "said surface" referred to in claim 1 is one which is treated. Claim 1 is requested to refer back to "said surface" as —said treated surface—in order to clarify that it is a treated surface being referred to in the claims.

Further, the claims are grammatically indefinite because claims 1 and 4-5 refer to "is" at each of lines 9, 3 and 2, respectively, in place of —are—. The term "bacteria" refers not to a bacterium but to bacteria which has a pluralistic meaning directed to either more than one kind of genus or species or whole cells thereof.

***Claim Rejections - 35 USC § 102/103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claim 1 is rejected under 35 U.S.C. 102(b)/103 as being anticipated, or in the alternative rejected under 35 USC 103 by newly cited Gamlen, note the enclosed PTO-1449 Form.

Claim 1 is drawn to a surface treated so as to be capable of controlling odor caused by an organic material, said surface comprising: dormant bacteria which are active when exposed to the organic material, at least one adhering agent for adhering the bacteria to the surface and bacteria when activated are capable of digesting the organic material.

Gamlen teaches a material (i.e. litter) and combining Bacillus bacteria therewith capable of digesting waste (i.e. organic material). See the abstract and column 1, line 60 and lines 65-68 and column 2, line 5 and lines 40-48 and lines 60-63. Such waste is taught to be dealt with in a manner which will also control odor in an area, note column 1, lines 10-15. The bacteria is associated with the material by spraying it upon the material and the bacteria upon coming in contact with the waste then digest the waste. The effect is taught to be long lasting in that odor is controlled when the material is first treated and continues to be controlled at a later time when the material is transported elsewhere such as to a land fill, column 3, lines 35-48. The material can be in particles. Particles have surfaces. The bacteria can be sprayed upon or applied in solid form. BIO-ENZYMES which contains bacteria in powder form can be used as well. Also note column 3, lines 5-68 and column 4, all lines. The spray reads on an adhering agent. Further, the clay may function as an adhering agent because of its positive and negative charges at various sites on the particulate clay material. In other words, the surface can

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include adhering properties and thus the clay material can also function as an adhering agent. Thus, the material also functions as a surface for the bacteria to be associated with or adhered to per se. The bacteria in powder form reads on dormant bacteria.

The claim appears to be identical to the disclosed cited subject matter as discussed above and is therefore considered to be anticipated by the teachings therein. A treated clay material or surface particle comprising dormant bacteria capable of digesting organic material on the surface particle and further the presence of clay in the material or surface particle is clearly taught. Clay can function as an adhering agent as discussed above. In the alternative that the reference does not teach or that the adhering agent is not inherent to the cited disclosed, then the claim is rendered prima facie obvious over the cited prior art because clay would have been expected to provide successful results as an adhering agent and is taught to be comprised by the treated particle surfaces of the litter material. Hence the cited reference further teaches a particle comprising not only clay but also *Bacillus* capable of digesting organic material to control odor. The claim is at least prima facie obvious over the cited reference.

***Claim Rejections - 35 USC § 103***

Claims 2-3, 6-7, and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gamlen, discussed above, in view of previously cited Horney et al, (B) note the previously submitted PTO-892 Form.

Claims are further drawn to *Bacillus* in sporulated form of species *B. megaterium* and the surface can be tile or ceramic.

Gamlen is discussed above and discloses clay.

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Horney et al are disclose treating organic waste with spore forming B. megaterium, note column 1, lines 10-16 and column 2, lines 30-50, and line 49 and column 4, lines 39-40. Further, disclosed is treated containers at column 5, lines 20-28.

The claims differ from Gamlen in that Bacillus in sporulated form of species B. megaterium and tile or ceramic are not disclosed.

It would have been obvious to one of ordinary skill in the art to select for the Bacillus of Gamlen in sporulated form from species B. megaterium as disclosed by Horney to treat a tile or ceramic surface because these are well known by one of skill in the art to be clay comprising surfaces. Clearly one of skill would have been motivated to treat tile or ceramic using the Bacillus of the cited prior art combination in order to digest organic material capable of causing odor from a tile or ceramic having such organic material thereupon. The clay comprised by the surface would have been expected to provide successful results as an adhering agent for sporulated Bacillus megaterium. In the absence of an unexpected successful results the claim are rendered prima facie obvious over the newly cited prior art.

Claims 4-5 and 8-19 and 22-25 are free of the prior art.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art rejected claims fail to be patentably distinguishable over the state of the art discussed above and cited on the previously enclosed PTO-892 and enclosed PTO-1449. Therefore, the claims are properly rejected.

The remaining references listed on the enclosed PTO-1449 are cited to further show the state of the art.

No claims are allowed.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

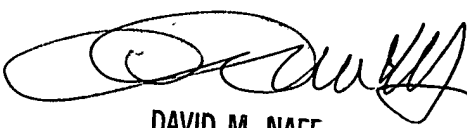
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Deborah K. Ware  
February 5, 2005

  
DAVID M. NAFF  
PRIMARY EXAMINER  
ART UNIT 12657